

**ALLEGED SHIPMENT:** On or about December 26, 1944, by Parrott and Co., from Oakland, Calif.

**PRODUCT:** 247 cases, each containing 6 6-pound, 14-ounce cans, of tomato paste at Baltimore, Md.

**LABEL, IN PART:** (Cans) "Lido Brand Tomato Paste \* \* \* Packed by Thornton Canning Co., Thornton, Calif."

**VIOLATION CHARGED:** Misbranding, Section 403 (g), the article failed to conform to the definition and standard for tomato paste since it contained less than 25 percent of salt-free tomato solids.

**DISPOSITION:** February 27, 1945. A. J. Harris & Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond to be relabeled under the supervision of the Food and Drug Administration.

**7848. Adulteration of tomato puree and tomato paste. U. S. v. 349 Cases of Tomato Puree (and 4 other seizure actions against tomato puree and tomato paste). Default decrees of condemnation and destruction.** (F. D. C. Nos. 14405, 14413, 14415, 14416, 14442. Sample Nos. 78275-F, 78276-F, 78278-F, 92922-F to 92924-F, incl., 92930-F.)

**LIBELS FILED:** Between on or about November 8 and 20, 1944, District of Maryland and Eastern District of Pennsylvania.

**ALLEGED SHIPMENT:** Between on or about October 10 and 17, 1944, by the Uddo and Taormina Co., from Vineland, N. J.

**PRODUCT:** 391 cases, each containing 24 cans, of tomato puree, and 64 cases, each containing 100 cans, of tomato paste at Baltimore, Md.; and 21 cases, each containing 24 cans, of tomato puree, and 70 cases, each containing 100 cans, of tomato paste at Philadelphia, Pa.

**LABEL, IN PART:** (Cans) "Mountain Beauty Contents 1 Lb. 12 Oz. Tomato Puree [or "Contents 6½ Ozs. Avoir. Tomato Paste"] Packed For La Sierra Heights Canning Co., Inc., Buena Park, California," or "Mountain Beauty Contents 6 Ozs. Avoir. Tomato Paste."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the products consisted in whole or in part of decomposed substances.

**DISPOSITION:** Between December 5 and 14, 1944. No claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

**7849. Adulteration of tomato puree. U. S. v. 267 Cases of Tomato Puree. Default decree of condemnation and destruction.** (F. D. C. No. 15154. Sample No. 13401-H.)

**LIBEL FILED:** January 24, 1945, Southern District of Ohio.

**ALLEGED SHIPMENT:** On or about October 13, 1944, by D. E. Foote and Co., Inc., Baltimore, Md.

**PRODUCT:** 267 cases, each containing 6 6-pound, 8-ounce cans, of tomato puree at Cincinnati, Ohio.

**LABEL, IN PART:** "Mountain Pride Tomato Puree \* \* \* Distributed by Mount Airy Sales Co. Baltimore, Maryland."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

**DISPOSITION:** February 21, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**7850. Adulteration of tomato puree. U. S. v. 998 Cases of Tomato Puree. Decree of condemnation. Portion of product ordered delivered to a Federal institution, for use as animal food; remainder ordered released.** (F. D. C. No. 7932. Sample No. 1403-F.)

**LIBEL FILED:** July 16, 1942, Western District of Michigan; amended July 10, 1944.

**ALLEGED SHIPMENT:** On or about January 10, 1942, by the Ladoga Canning Co., from Lebanon, Ind.

**PRODUCT:** 998 cases, each containing 6 No. 10 cans, of tomato puree at Fremont, Mich.

**LABEL, IN PART:** (Cans) "Ladoga Brand Tomato Puree."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance by reason of the presence of

decomposed tomato material, as evidenced by mold, rot fragments, fly eggs, and fly maggots.

**DISPOSITION:** August 1, 1942. The Ladoga Canning Co., claimant, filed a motion to quash on the grounds that the fourth amendment to the Constitution of the United States had been violated, and subsequently amended the motion to include a claim that there was no admiralty jurisdiction in the matter. The district court, on September 21, 1942, handed down the following memorandum opinion denying the motion:

FRED M. RAYMOND, *District Judge*: "It being the view of the court that proceedings for condemnation under Section 304 (a) of the Federal Food, Drug and Cosmetic Act (21 U. S. C. A., Section 334) are essentially civil and are intended for protection of the lives and health of the public, and that they are not designed to obtain information for use in evidence against the owner and that therefore the Fourth Amendment to the Constitution is inapplicable (see *United States v. Eighteen Cases of Tuna Fish*, 5 F. (2d) 979; *United States v. B. & M. External Remedy*, 36 F. (2d) 53; *Boyd v. United States*, 116 U. S. 616; *North American Cold Storage Co. v. City of Chicago*, 211 U. S. 306; 15 Ann. Cas. 281; 56 C. J. 1166; 25 C. J. 1173; 22 Am. Jur., Food, Section 81), an order may be entered denying the motion of Ladoga Canning Company to quash warrant and seizure and for return of goods."

On October 5, 1942, the claimant filed exceptions to the libel, which were dismissed by the court on January 14, 1943, and subsequently, on or about January 26, 1943, the claimant filed an answer denying that the product was adulterated and submitted certain interrogatories. The claimant's motion for an order compelling answers to the interrogatories was denied in the following opinion of the court, dated April 21, 1943:

FRED M. RAYMOND, *District Judge*: "In proceedings in admiralty for seizure and destruction of alleged adulterated tomato puree introduced into interstate commerce, claimant has filed a motion for an order compelling answers to interrogatories. These interrogatories seek disclosure of the following information: (1) the extent to which the seized goods consisted of decomposed tomato products at time of shipment; (2) the number of cans taken out of shipment and their contents examined, with the can marks of each can; (3) the number of cans found to contain decomposed products, with the can mark of each can; (4) the nature of the test or examination made of the contents of each can; (5) the result of the test or examination made of the contents of each can with the can mark of each such can.

"The issue before the court under the statute is whether or not the food was adulterated when introduced into or while in interstate commerce. For this reason, the first interrogatory, as to whether the goods consisted of decomposed products at the time of shipment is wholly immaterial.

"The remaining interrogatories, in substance, seek to obtain from the libellant evidence upon which it will rely to support its own allegations, and are objectionable for this reason. In the case of *Coronet Phosphate Co. v. United States Shipping Co.*, 260 F. 846, Judge Learned Hand said (Page 849):

\* \* \* Interrogatories in the admiralty serve two purposes, to amplify the pleadings of the party interrogated, and to procure evidence in support of the libel or defense of the party interrogating. *Bock v. Int. Nav. Co.* (D. C.) 124 Fed. 711; *The Baker Palmer* (D. C.) 172 Fed. 154. They should not, however, be used merely to fish into the evidence which the party interrogated may produce in support of his own allegations. This limitation upon discovery has remained even in the most modern rules of procedure. A party is of course entitled to know whether his opponent admits the truth of his own allegations, and how far, so as to avoid unnecessary preparation for trial. He is not entitled to know what evidence his adversary will produce to prove the adversary's allegations, and what evidence he must himself produce to overcome the case so made. The result will, of course, be, as it has been in the past, that he must go to trial somewhat in the dark as to what he must meet. The pleadings are intended to advise him of that, and interrogatories are proper to reduce those allegations to very specific form. They should be encouraged for that purpose, but so far as they call upon the pleader to go further, and give, not only the details of his allegations, but the evidence by which he means to prove them, they are liable to abuse. If there develop on the trial a case of genuine surprise, the court, especially where there is no jury, has ample power to protect the party surprised.

"While it has been held that admiralty rule No. 31 as to interrogatories to parties should be as broadly construed as federal rule 33 touching disclosure of an adversary's case (see *The Exermont*, 1 F. R. D. 574; *Citro Chemical Co. v. Bank Line Limited*, 1 F. R. D. 638), the better rule is that interrogatories may not be used to examine the opposite party as to evidence upon which the other will rely to support his own case (*Jensen v. Sinclair Nav. Co.*, 58 F. (2d) 407;

Cargo Carriers v. The Prospect, 2 F. R. D. 519; The Arthur Connors, 35 F. Supp. 775).

"An order will be entered denying the motion filed February 26, 1943."

The claimant having withdrawn its answer, the court, on November 18, 1944, entered a judgment of condemnation. On November 20, 1944, it was ordered that certain portions of the product identified by certain code numbers be destroyed by delivery to a Federal institution, for use as animal food, and that the remainder be released to the claimant.

**7851. Adulteration and misbranding of tomato sauce. U. S. v. 7,414 Cases of Tomato Sauce. Decree of condemnation. Product ordered released under bond for relabeling.** (F. D. C. Nos. 13526 to 13566, incl. Sample No. 27337-F.)

**LIBEL FILED:** September 6, 1944, District of Puerto Rico.

**ALLEGED SHIPMENT:** On or about April 8, 1944, by A. Glorioso, New Orleans, La.

**PRODUCT:** 7,414 cases, each containing 72 (or 48) 7½-ounce cans, of tomato sauce at San Juan, Puerta de Tierra, Rio Piedras, and Santurce, P. R.

**LABEL, IN PART:** (Cans) "Eagle Brand Italian Style Tomato Sauce."

**VIOLATION CHARGED:** Adulteration, Section 402 (b) (2), an unconcentrated tomato product had been substituted in whole or in part for tomato sauce, an article which is understood by the trade and consuming public to be a concentrated tomato product.

Misbranding, Section 403 (a), the name "Tomato Sauce" was false and misleading as applied to an unconcentrated tomato product.

**DISPOSITION:** January 12, 1945. A. Trigo & Co., Sucrs., San Juan, P. R., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond for relabeling under the supervision of an officer designated by the Administrator of the Federal Security Agency.

## NUTS AND NUT PRODUCTS

**7852. Adulteration of shelled almonds and almonds in shell. U. S. v. 3 Cases of Shelled Almonds and 25 Bags of Almonds in Shell. Consent decree of condemnation. Products ordered released under bond.** (F. D. C. Nos. 14749, 14750. Sample Nos. 89976-F, 98681-F.)

**LIBELS FILED:** December 8, 1944, Eastern District of Illinois.

**ALLEGED SHIPMENT:** On or about November 30 and December 6, 1943, by the William A. Camp Co., Inc., New York, N. Y.

**PRODUCT:** 3 28-pound cases of shelled almonds at O'Fallon, Ill., and 25 110-pound bags of almonds in shell at National Stock Yards, Ill.

**LABEL, IN PART:** (Shelled almonds) "Rose Product of Spain."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the products consisted in whole or in part of filthy substances by reason of the presence of insect-damaged almonds, and (shelled almonds) insect excreta and insect fragments, and (almonds in shell) shriveled almonds.

**DISPOSITION:** December 21, 1944. L. Allen & Sons, claimant, having admitted the allegations of the libels, and the cases having been consolidated, judgment of condemnation was entered and the products were ordered released under bond to be cleaned and sorted, in order to eliminate all filth, under the supervision of the Food and Drug Administration.

**7853. Adulteration of cashew kernels. U. S. v. 26 Cans of Cashew Kernels. Default decree of condemnation and destruction.** (F. D. C. No. 14483. Sample No. 68383-F.)

**LIBEL FILED:** November 20, 1944, Northern District of Ohio.

**ALLEGED SHIPMENT:** On or about April 12, 1944, by Wood and Selick, Inc., from Chicago, Ill.

**PRODUCT:** 26 25-pound cans of cashew kernels at Cleveland, Ohio.

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of insect-infested cashew kernels.

**DISPOSITION:** December 29, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.